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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,308	10/31/2003	Charles F. Shane	SHANE	1397
27805	7590	08/23/2006	EXAMINER	
THOMPSON HINE L.L.P. P.O. BOX 8801 DAYTON, OH 45401-8801			MATHEW, FENN C	
			ART UNIT	PAPER NUMBER
			3764	
DATE MAILED: 08/23/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/698,308	SHANE, CHARLES F.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Fenn C. Mathew	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/31/03</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification fails to adequately describe the 'supporting WSCS'.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term 'the supporting WSCS' lacks positive antecedent basis. It is unclear what is meant by the term.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flaghouse Inc. Special Populations catalog Spring 1995 (herein referred to as 'Flaghouse') in view of Moritz (U.S. 3,339,920). Referring to claim 1, Flaghouse teaches on page 24, a balance beam assembly including a connecting base having an upper and lower planar surface inherently, and a plurality of balance beam sections comprising (bases and beams), the balance beam providing a variety of steps and integrally attached (via bases) and rotatably secured to one another, with the balance beam rotatably attached to the connecting section. Flaghouse fails to teach a plurality of supporting bases. Moritz teaches in columns 1 and 2, that it is desirable to provide a plurality of bases in order to allow different angles of inclination when utilizing a balance beam. In view of the teachings of Moritz it would have been obvious to one of ordinary skill in the art at the time of invention to provide the Flaghouse device with a plurality of supporting bases as taught by Moritz in order to allow a user to adjust the angles of inclination thus providing new and challenging ways of training and/or rehabilitation. Referring to claim 2, note that the supporting bases of the supporting bases of Moritz are trapezoidal in shape. Referring to claim 3, note in figure 1, that Moritz teaches the desirability of providing bases having an increasing height. Referring to claim 4, note that Moritz's supporting bases carry approximately U-shaped ledges. Referring to claim 5, as best understood Moritz's supporting bases also include vertical tongues. Referring to claim 6, Flaghouse fails to teach a 'groove'. However, in col. 5 lines 1-20, Moritz teaches the desirability of shaping the board with a 'groove' (lower portion 38 forms a

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right angle leaving a 'groove') in order to engage the tongues of the supporting bases.

In view of the teachings of Moritz, it would have been obvious to one of ordinary skill in the art at the time of invention to provide Flaghouse with a vertically positioned groove in order to allow the beam to better and more securely engage the vertical tongues of the support base thus preventing unwanted movement of the beam during use.

Referring to claim 7, as broadly claimed, the balance beam sections of Flaghouse may be rotated in a manner that will place the sections adjacent one another to form a compact, integral, unified structure. Placement of the folded structure on its side would lead to the beams being positioned on top of one another. Referring to claim 8, Flaghouse teaches two balance beam sections rotatably secured to the connecting base.

7. Referring to claims 9-11, the claims are substantially similar in scope to claims 1-5 and 7-8. Note rejections above.

### ***Conclusion***


8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lahman (U.S. 5,616,102) and Stone (U.S. 3,580,568) teach examples of foldable balance beams.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C. Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Fenn C. Mathew  
August 17, 2006